IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KEITH O. WOOD,)
)
Petitioner)
)
vs.)
)
D.O.C. SCI-CRESSON, and the)
COMMONWEALTH OF PENNSYLVANIA) Civil Action No. 05-51J
BOARD OF PROBATION AND PAROLE) Judge Kim R. Gibson/
) Magistrate Judge Amy Reynolds Hay
Respondents	
)

MEMORANDUM ORDER

The above-captioned Petition was received by the Clerk of Court on February 10, 2005, and was referred to United States Magistrate Judge Amy Reynolds Hay for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges. The Magistrate Judge issued a Report and Recommendation (Dkt. [73]) that the Respondents' Motion to Dismiss be granted and the Petition for Writ of Habeas Corpus be dismissed as moot. Petitioner filed objections however, none of the objections persuades the Court that the report's recommendation was wrong and no specific mention of the objections is required since they are all adequately addressed in the report itself. Accordingly, after *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, and the objections, the following order is entered:

AND NOW, this $\frac{14^{+h}}{4}$ day of $\frac{1}{4}$, 2007,

IT IS HEREBY ORDERED that the Respondents' Motion to Dismiss is

GRANTED and the Petition for Writ of Habeas Corpus is **DISMISSED** as moot.

In order to obtain a certificate of appealability, a habeas Petitioner must make a

substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253 (C)(2). There is a difficulty in applying this test when the Court does not address the constitutional issues raised but decides the habeas petition based on a procedural issue such as mootness, as is the case herein.

Slack v. McDaniel, 529 U.S. 473 (2000); Walker v. Government of The Virgin Island, 230 F.3d 82, 89-90 (3d Cir. 2000). In resolving this difficulty, the Supreme Court in Slack v. McDaniel, held that

[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

<u>Slack v. McDaniel</u>, 529 U.S. at 484. Hence, the analysis as to whether a certificate of appealability should issue to review a procedural question, has "two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding."

<u>Id.</u> at 473. The test is conjunctive and both prongs must be met. <u>See Walker v. Government of the Virgin Islands</u>, 230 F.3d at 90.

Applying this standard to the instant case, the Court concludes that jurists of reason would not find it debatable whether dismissal of the Petitioner's claims because they are moot was correct and that jurists of reason would not find it debatable that refusing to address the DNA issue based on it not being cognizable in habeas was correct. Having found the one prong unmet, the Court need not address the other prong of whether jurists of reason would find it debatable whether petitioner's claims state a valid claim of a denial of a constitutional right.

Accordingly, IT IS ORDERED that a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the Report and Recommendation (Dkt. [73])

of Magistrate Judge Hay, filed March 15, 2007, is adopted as the opinion of the court.

May 14, 2007

The Honorable Kim R. Gibson United States District Court Judge

cc: Hon. Amy Reynolds Hay
United States Magistrate Judge

Keith Wood DOC & POD # 6821 4-C-222 Allegheny County Jail 950 Second Avenue Pittsburgh, PA. 15219-3100

Mary Lynch Friedline, Esquire by Notice of Electronic Filing